

United States Court of Appeals For the First Circuit

DOCKETING STATEMENT

No. 16-1085

Short Title: Small Justice v. Xcentric

Type of Action

- ☒ Civil
☐ Criminal/Prisoner
☐ Cross Appeal

A. Timeliness of Appeal

1. Date of entry of judgment or order appealed from December 31, 2015
2. Date this notice of appeal filed January 14, 2016 ECF # 161
If cross appeal, date first notice of appeal filed _____
3. Filing date of any post-judgment motion filed by any party which tolls time under Fed. R. App. P. 4(a)(4) or 4(b) 1/13/16 ECF # 160 AND 1/28/16 ECF # 169
4. Date of entry of order deciding above post-judgment motion _____
5. Filing date of any motion to extend time under Fed. R. App. P. 4(a)(5), 4(a)(6) or 4(b) _____
Time extended to _____

B. Finality of Order or Judgment

1. Is the order or judgment appealed from a final decision on the merits? ☒ Yes ☐ No
2. If no,
 - a. Did the district court order entry of judgment as to fewer than all claims or all parties pursuant to Fed. R. C. P. 54(b)? ☐ Yes ☒ No
If yes, explain _____
 - b. Is the order appealed from a collateral or interlocutory order reviewable under any exception to the finality rule? ☐ Yes ☒ No
If yes, explain _____

C. Has this case previously been appealed? ☒ Yes ☐ No

If yes, give the case name, docket number and disposition of each prior appeal
Small Justice et al v. Xcentric Ventures, 15-1506 pending

D. Are any related cases or cases raising related issues pending in this court, any district court of this circuit, or the Supreme Court? ☒ Yes ☐ No

If yes, cite the case and manner in which it is related on a separate page. If abeyance or consolidation is warranted, counsel must file a separate motion seeking such relief.

- E. Were there any in-court proceedings below? ☐ Yes ☒ No
 If yes, is a transcript necessary for this appeal? ☐ Yes ☒ No
 If yes, is transcript already on file with district court? ☐ Yes ☒ No

F. List each adverse party to the appeal. If no attorney, give address and telephone number of the adverse party. Attach additional page if necessary.

1. Adverse party Xcentric Ventures LLC
 Attorney Daniel G. Booth, Esq., Booth Sweet LLP
 Address 32 R. Essex Street #1A, Cambridge MA 02139
 Telephone 617-250-8602
2. Adverse party Xcentric Ventures LLC
 Attorney Maria Crimi Speth, Esq., Jaburg & Wilk PC
 Address 3200 N. Central Avenue, Suite 2000, Pheonix AR 85012
 Telephone 602-250-1000
3. Adverse party _____
 Attorney _____
 Address _____
 Telephone _____

G. List name(s) and address(es) of appellant(s) who filed this notice of appeal and appellant's counsel. Attach additional page if necessary.

1. Appellant's name Richard A. Goren
 Address Law Office of Richard Goren, One State Street Suite 1500, Boston MA 02109
 Telephone 617-933-9494

 Attorney's name Richard A. Goren, Esq.
 Firm Law Office of Richard Goren
 Address One State Street Suite 1500, Boston MA 02109
 Telephone 617-933-9494
2. Appellant's name Small Justice LLC
 Address c/o Law Office of Richard Goren, One State Street Suite 1500, Boston MA 02109
 Telephone 617-933-9494

 Attorney's name Richard A. Goren, Esq.
 Firm Law Office of Richard Goren
 Address One State Street Suite 1500, Boston MA 02109
 Telephone 617-933-9494

Will you be handling the appeal? (In criminal cases counsel below will handle the appeal unless relieved by this court.) ☒ Yes ☐ No

Reed A. Green

Date February 3, 2016

United States Court of Appeals
For the First Circuit

No. 16-1085

SMALL JUSTICE LLC; RICHARD A. GOREN;
CHRISTIAN DUPONT, d/b/a
Arabianights-Boston Massachusetts

Plaintiffs - Appellants

v.

XCENTRIC VENTURES LLC

Defendant - Appellee

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D. RELATED CASE STATEMENT

On March 27, 2015 the district court for the District of Massachusetts in *Small Justice LLC et al v. Xcentric Ventures LLC*, Civil Action No. 13-cv-11701-DJC, entered judgment for Xcentric denying plaintiffs all relief under their complaint. (ECF # 104). Plaintiffs-appellants filed a notice of appeal of that judgment on April 24, 2015. (ECF #108). That appeal is pending in this Court as case number 15-1506.

On December 31, 2015, the district court in that case entered the two Orders that are the subject of this appeal: (i) ECF #158, granting Xcentric's October 20, 2015 Fed. R. Civ. P. 54(d)(2) motion (ECF # 137) and holding XCentric qualified as a "prevailing party" under 17 U.S.C. §505 pursuant to the judgment

entered on March 27, 2015 (ECF #104)and awarding Xcentric over \$124,000 in attorneys' fees and costs; and, (ii) ECF #159 granting Xcentric's October 23, 2015 Fed. App. P. 7 motion (ECF # 138)and holding XCentric qualified as a "prevailing party" under 17 U.S.C. §505 pursuant to the judgment entered on March 27, 2015 (ECF #104)and ordering appellants in their appeal of the March 27, 2015 judgment to post an appeal bond to [continue to] proceed with that appeal.

On January 5, 2016, in this Court in case number 15-1506, Xcentric, the appellee, moved for a partial dismissal of the appeal.

On January 13, 2016, in the district court Xcentric filed a Fed. R. Civ. P. 52(b) motion (ECF # 160) addressing solely the December 31, 2015 Order (ECF # 158).

On January 14, 2016, in the district court plaintiffs filed a notice of appeal (ECF # 161) claiming an appeal from both December 31, 2015 Orders (ECF # 158 and #159). That same day in the district court, plaintiffs also filed a motion (ECF # 162) seeking: (i) to stay, pending appeal, the execution of the December 31, 2015 money judgment that plaintiffs pay Xcentric \$124,272.56 (ECF #158); and, (ii) to vacate the December 31, 2015 Order (ECF #159)requiring appellants in case number 15-1506 pending in this Court to post a \$30,000 appeal bond.

On January 14, 2016, this Court in case number 15-1506 entered an Order effectively staying the April 24, 2015 appeal of the March 27, 2015 judgment by suspending a deadline for Xcentric's appellee brief. This Court entered orders:

A new briefing schedule will be set at a later date after the district court resolves the pending January 13, 2016 motion with respect to attorneys fees and after the time for appealing from the attorneys fees and bond orders has run.

The parties shall file a status report every thirty days keeping this court abreast of proceedings in the district court.

On January 28, 2016, in the district court the plaintiffs filed a motion (ECF #169) under Fed. R. Civ. P. 52(b) and 59(e) requesting the district court to vacate both December 31st Orders.

On February 1, 2016, in the district court the plaintiffs made a further filing (ECF #171) both in opposition to Xcentric's January 13, 2016 motion (ECF # 160) and to supplement filed their January 28, 2016 motion (ECF #169).

This appeal has been automatically suspended due to cross motions under both Fed. R. Civ. P. 52(b)¹ and Fed. R. Civ. P. 59

'Xcentric's motion applies only to ECF # 158, the Order awarding fees and costs. Appellants' motion under both R. Civ. P. 52(b) and Fed. R. Civ. P. 59(e) applies to both ECF# 158, the Order awarding fees and costs, and ECF #159, the Order requiring Appellants to post a \$30,000 appeal bond before continuing their appeal presently pending in this Court, as case number 15-1506.

(e). In the event the district court vacates the two Orders (ECF #158 and #159) this appeal will be moot. If the district court does not vacate the two Orders, appellants anticipate moving this Court to consolidate the two appeals.

G. LIST OF NAMES AND ADDRESSES OF EACH APPELLANT WHO FILED THE
APPEAL AND APPELLANT' COUNSEL-CONTINUATION SHEET

Appellant's name: Christian DuPont

Address: c/o Law Office of Richard Goren, One State Street Suite
1500, Boston MA 02109

Telephone: 617-933-9494

Attorney's name: Richard A. Goren, Esq.

Firm: Law Office of Richard Goren

Address: One State Street Suite 1500, Boston MA 02109

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No. 16-1085

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Plaintiffs – Appellants

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on February 3, 2016.

/s/ Richard A. Goren